

Remarks

This amendment responds to the official action of May 5, 2011.

An objection to the drawings was made and the claims were rejected as indefinite, based on the Examiner's alleged inability to find illustrated in the drawings and/or to understand the limitation in claim 1, ". . . the mounting bracket is open along a rear side toward the wall. Reconsideration is requested.

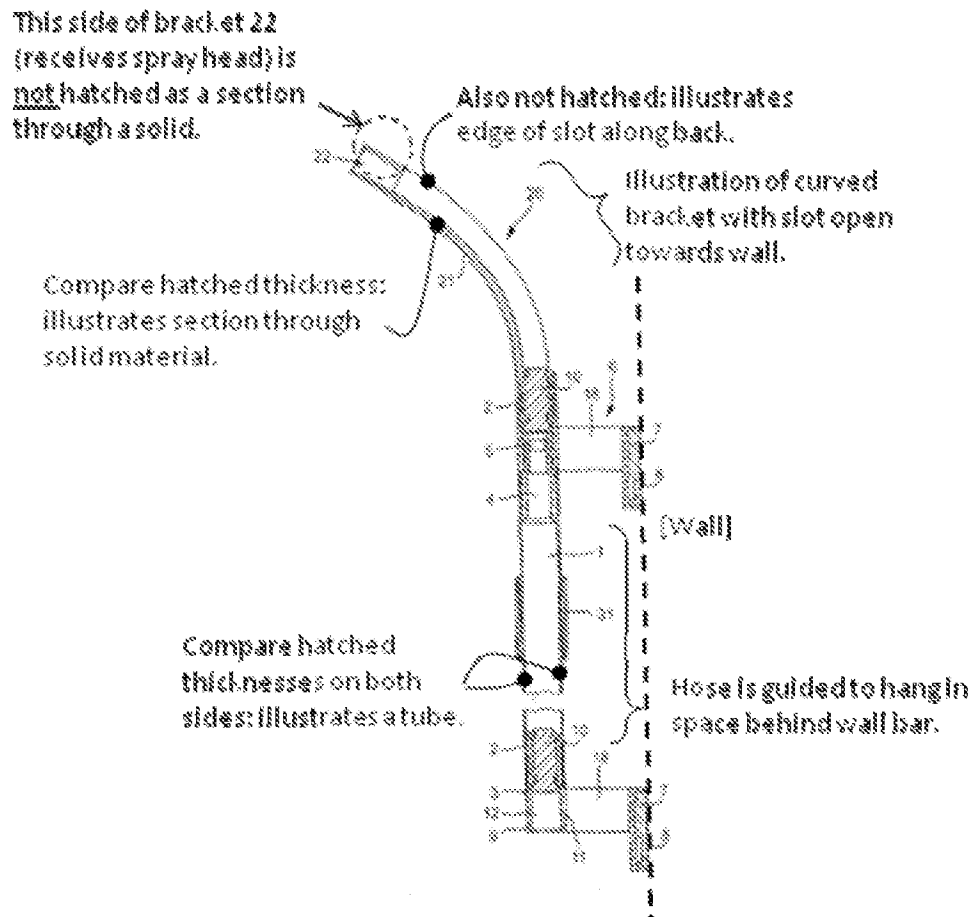
In the official action, it is asserted that it is unclear what opening is being referenced in the claim. The Examiner states (erroneously) that the only opening shown in the drawings is opening 32 in the "additional" bracket. Further, it is asserted that the limitation of the mounting bracket being open along the rear side toward the wall is "inferentially included," and that there is no antecedent basis for "the wall." It is suggested in the official action that this alleged indefiniteness might be alleviated with respect to elements recited in the claim as related to the wall, by reciting that the elements are "adapted to be . . . ."

Applicant has adopted the Examiner's "adapted" terminology. Additionally, clear antecedent basis for "a wall" appears in the preamble of claim 1 rendering definite the recitals of "the wall" at lines 4 and 14.

The aspect of the mounting bracket being open along a rear side toward the wall is quite clearly illustrated in the drawings, which are consistent with the explanation of the mounting bracket found in the disclosure, and precisely and plainly show that aspect as definitely defined in independent claim 1. There is no basis to suggest as in the official action that attributes of parts that are not addressed in claim 1 (such as the "opening" 32 in the additional bracket 32 that provides an alternative point of attachment for the hand shower spray head when detached from the mounting bracket 20/21) have made it impossible to understand how the mounting bracket 20 can be open along a rear side toward the wall. Such positions taken in the official action are wholly without merit. Furthermore, prior art rejections that rely on such positions as a basis to ignore or discount the limitations recited in claim 1 fail to address the invention as disclosed and properly claimed. Applicant requests

reconsideration and withdrawal of the erroneous objections to the drawings on the ground of failure to illustrate claimed aspects, reconsideration and withdrawal of the rejection of the claims as indefinite, and allowance of the claims over the prior art of record, which fails to structurally or functionally resemble applicant's invention claimed as a whole.

In addition to the amendment of claim 1 as discussed above, applicant proposes to amend Fig. 1 to show the wall as a dashed line, and to insert a legend identifying precisely where mounting bracket as disclosed, claimed, and shown in the drawings is open along the rear toward the wall. A replacement sheet of drawings is submitted with this amendment and an annotated copy of the sheet containing Figs. 1 and 2, showing the changes made, is appended to these remarks. For purposes of further explanation, applicant refers to the following copy of Fig. 1 with additional labels (not to be regarded as an amendment of the drawings).



No new matter is presented. The specification explains that the mounting bracket 20 features the form of a pipe that is slotted on the rear side. (Page 6, line 21.) This is clearly shown in Fig. 1. The specification explains that the handle of a shower attachment on a hose (such as a spray head that otherwise may be manipulated manually) can be fit into the conical bracket 22 at the end of bracket 20. The hose occupies the interior of the pipe piece 21, back to the upper end of the wall rod, from which point the hose hangs down, always between the wall rod and the wall. (Page 7, lines 4-9.)

The mounting bracket 20 holds the shower attachment in position to spray down onto the user. According to some of the claims, the user can swivel the mounting bracket on the vertical axis of the wall rod. Whether or not swiveled, the bracket positions the hose in such a way (in the slotted rear side of bracket 20) to prevent the hose from hanging down from under the shower attachment and getting in the user's way. These aspects are supported by an enabling disclosure. The corresponding structures are positively defined in claim 1 as amended and are shown plainly in the drawings.

There is no discussion in the official action to explain how these clearly depicted elements are somehow not being seen in the drawings. Instead, the official action is devoted to an effort to read the recited mounting bracket language on the alternative receptacle 32 for the spray head. However, that part is not on or associated with a mounting bracket that is an upward continuation of the wall rod, is curved, has a conical opening of the shower attachment, and is open along its rear side toward the wall, forming a slot for receiving the hose. This subject matter is fully disclosed, positively claimed and plainly shown in the drawings. Applicant requests retraction of the rejections under 35 U.S.C. §112, second paragraph and the objections under 37 C.F.R. §1.83(a).

Furthermore, the prior art lacks structures or functions that remotely resemble the subject matter claimed. There is no basis to assert that the invention is known or

obvious. Claims 1, 3, 7-8, 12 and 14-16 were rejected as obvious from a combination of US 2003/0221251 – Tse and US 5,833,192 – Buhrman. Claims 9-11, 13, 17, 19 are rejected over Tse and Buhrman in combination with US 4,726,552 – Warshawsky. Reconsideration is requested. There is no possible combination of features from these references that meets applicant's invention claimed as a whole. The prior art references have not attempted to provide a wall bracket that curves up from the end of a wall rod, the bracket having an open slot along the back facing the wall for receiving the hose in a manner that keeps the hose back and out of the way.

Considering Tse and Buhrmann, a combination of any aspects selected from the two documents does not result in the invention. The combination fails to meet the applicant's invention claimed as a whole. Tse discloses a rod that is hooked over a fixed a water pipe 12. See figure 2. The rod 1 is not a wall rod as claimed because it is not affixed to a wall. It is affixed to a shower pipe 12. Tse does not have a wall support adapted to fix the wall rod to the wall. The rod 1 of Tse is affixed at the channel 14 of shoulder 6 to the water supply pipe 12.

Claim 1 recites a mounting bracket attachable to the wall rod and adapted for carrying a shower attachment (in the disclosed embodiments the shower attachment is the spray head at the end of a shower hose). Claim 1 recites that the mounting bracket comprises a lengthwise extension of the wall rod . . . is formed as a continuation extending the wall rod upwardly . . . and has a centerline in the plane of the axis of the wall rod. These aspects are positively claimed and are missing from the prior art. In Tse, the handle of the hand shower spray head is to be inserted into the showerhead holder 5, which is most certainly not a lengthwise upward extension of the rod 1 as positively claimed.

The holder 5 of Tse slides up and down on rod 1 and holds the spray head laterally alongside the wall rod. Even assuming that Tse's wall rod is capable of upward and downward movement relative to the wall pipe in clamp portion 7, there is no possible position in which the holder 5 can become an upward extension of the wall rod. This aspect is positively claimed and is missing from the prior art.

It appears from the official action that Tse's shoulder 6 with opening 14 is considered to correspond to the applicant's mounting bracket 20 that receives the shower head at the end. However this interpretation of Tse is incorrect. In Tse, the grip of the spray head fits into slot 9 of the showerhead holder 5 at the lower end of the rod 1. There is no possibility that a spray head could fit into opening 14, which is the only structure provided for attaching the wall rod relative to any fixed structure.

Tse does not disclose anything resembling a mounting bracket that receives a shower attachment spray head at the end and is open along a back side facing the wall forming a slot that guides the hose. This aspect is positively claimed, clearly depicted in the drawings, and missing from the prior art. Tse has nothing whatsoever to hold or guide a hose, which can only hang down freely from the spray head. When the hand shower is inserted into slot 9 of Tse's showerhead holder 5 and is directed directly outwardly to the front toward the user, namely directly away from the wall rod 1 and from the wall, then the hose of the showerhead hangs down unprotected in front of the rod. The situation is much the same if the hand shower on a lateral side of the wall. The hose can only hang under the spray head. Of course no person skilled or unskilled in the art would routinely consider orienting the showerhead holder so that the spray is directed to the wall.

As regards Buhrman, the front page of the document likewise plainly shows that the hose H hangs loosely under the spray head at an intermediate position along the bar. From figure 5 you can see that the holder 72 is short compared to the grip for the spray head. The Buhrman holder is not provided on a bracket that curves upwardly from a wall rod and has an open rear slot guiding the hose down to the hose to locate the depending hose behind the wall rod.

Even in Buhrman's Fig. 6, where the rod is located far away from the wall, even farther than the point F of connection to the water pipe, there is no open slot structure anywhere, facing toward the wall and capable of guiding the hose. In all the embodiments of Buhrman, the hose hangs down from a holder slidable on the bar. Applicant's claimed mounting bracket is open along a rear side toward the wall,

forming a slot for removably receiving an outlet hose leading to the attachment, namely to the spray head fit in the conical bracket at the end of the mounting bracket. This aspect is positively claimed, is clearly shown in the drawings, and is missing from the prior art.

Applicant's claims positively recite that the mounting bracket comprises a lengthwise extension of the wall rod, the mounting bracket being formed as a continuation extending the wall rod upwardly, wherein a centerline of the mounting bracket lies in a plane that includes a longitudinal axis of the wall rod. Applicant's claims define that the mounting bracket is curved and comprises a conical bracket for holding the shower attachment at an end of the mounting bracket. Applicant's claims recite that the mounting bracket is open along a rear side toward the wall, forming a slot for removably receiving an outlet hose leading to the conical bracket at the end of the mounting bracket. These aspects are not met by the cited references. Even if the skilled person randomly combined aspects from both Buhrman and Tse, there is no way that the result of the combination could meet the aspects of claim 1 as a whole. There is no articulated explanation on the record and no explanation possible to assume routine variations from the prior art to the invention claimed as a whole. The rejection under 35 USC §103 does not meet the invention claimed as a whole.

According to applicant's claims and as fully supported in the disclosure, the mounting bracket that receives at its end the holder for the grip of the hand shower is a curving structure at the upper end of the wall rod and has a slot along its rear side that receives and guides the hose. Applicant's hose is held and guided to reside along the back of the mounting bracket and thus hangs down from a point that is close to the wall rod, specifically to reside between the wall rod and the wall. No such arrangement is even hinted in the prior art. There is no reason to believe that a person of ordinary skill with options available for holding a spray head on a holder made to slide on a bar would perceive any probable benefit to be found in a wall bar without the ubiquitous vertical sliding adjustment and in fact wherein the hand shower holder is not merely carried on a slider on the bar (like applicant's holder 30, 32 in

Fig. 2) but is directed along the back of the curved endwise elongation structure of mounting bracket 20. There is no basis to believe that the person of ordinary skill having the benefit of all the cited prior art would expect to find a likely benefit in the basically different idea of an endwise elongation of a wall bar for holding the spray head and preventing the hose from simply hanging down from the spray head as it does in every one of the cited references. Such a over-arched spray position with hose location management is nowhere to be found in the prior art of record.

According to the invention claimed, the mounting bracket 20 curves upwardly from the top of the wall bar, i.e., out over the user, holding the shower attachment in position to spray down onto the user. The bracket with its slotted backside facing the wall hold the hose in such a way as to prevent the hose from hanging down from under the shower attachment and getting in the user's way. The hose is guided along the back of the mounting bracket.

In the official action, the prior art as represented by Tse is erroneously applied against applicant's claims in a number of ways. The official action asserts with respect to claims 1, 3, 7, 8, 12 and 14-16, *Tse teaches a wall rod 1*. But Tse's rod 1 is not a wall rod. It is a rod depending from the shower pipe via opening 14 in shoulder 6. This is plainly shown in Fig. 2 of Tse.

The official action says that Tse has *a mounting bracket 4 that comprises a lengthwise extension of the wall rod and is formed as a continuation extending the wall rod upwardly (from the position of the wall rod below 4, for example shown where reference character '1' points in figure 1)*. This position is clearly erroneous. The elements 4 and 5 that slide on rod 1 in Tse cannot possibly extend beyond the ends of rod 1. They are laterally slidable on rod 1 and captive between end nubs 2 and 3. They cannot possibly reside in any longitudinal extension of the rod 1.

The official action provides that *the mounting bracket 4 is curved and comprises an open pipe 14 with an opening at an end/along the pipe that forms a 'slot'*. But the "mounting bracket" in applicant's claim 1 is the element that holds the spray device. The examiner refers to the element in Tse that affixed rod 1 to the

shower pipe. The opening 14 in Tse is occupied by the water pipe 12 (see Fig. 2). These parts in Tse do not form a mounting bracket as claimed and cannot possibly hold shower attachment or provide a slot for guiding a shower hose along a longitudinal extension of a wall bar while also laterally attaching a rod to a wall pipe via the same such structure. The official action inconsistently applies the claims to different elements of Tse and even as applied in this undisciplined way fails to show that the positively recited elements of claim 1 can be found in the prior art.

The official action goes on to say that Tse's *opening/slot is formed and sized for receiving shower attachment 12, as discussed in pp [0012]*. This statement is also clearly erroneous. Paragraph [0012] of Tse actually says that the opening/slot 14 is formed and sized for receiving "the pipe of the fixed shower head." See pipe 12 in Fig. 2.

The official action further states that the Tse *wall bracket is 'pivotably' attached to the wall rod as the bracket is slidably inserted onto 2 and may pivot freely until the clamp portion 7 attaches the two components together. The bracket may pivot freely again when the button 13 is depressed to release the clamp. A longitudinal axis of the wall rod is where the bracket may pivot during operation.* This official discussion of pivoting is misplaced in the official action and is irrelevant with respect to claims 1, 3, 7, 8, 12 and 14-16. The aspect of swiveling does not appear in the claims to which the rejection was directed. See claim 9 for the introduction of rotation.

With regard to claim 9 and the claims that depend from claim 9, applicant does not dispute that Tse's parts 4 and 5, which slide along bar 1, might be rotated around bar 1 or that bar 1 might be rotated within part 4 or 5 or both. But that fails to even resemble a curved extension longitudinally extending a wall rod upwardly. These claims are allowable over the prior art of record.

The official action states that in Tse, *a centerline of the mounting bracket lies in a plane that includes a longitudinal axis of the wall rod. Further, the mounting bracket 4 is open along a 'rear side toward the wall' in that it is open around the wall rod below 4.* The mounting bracket in Tse does not longitudinally extend the rod 1,



and the official interpretation of the centerline in Tse being in the plan of the longitudinal axis appear to refer to the axis of bar 1 within clamp 7. As such, the mounting bracket in Tse, which has been construed to be opening 14, plainly is not open along the rear side toward the wall. The official position that space is "open" surrounding rod 1 below slot 14 does not follow either the express language or any reasonable construction of the claim, which says that the slot on the back of the mounting bracket is open toward the wall.

For all the foregoing reasons, there is no basis for the official reliance on Tse. Those aspects allegedly found in Tse are based on arbitrary, inconsistent and clearly erroneous readings of terms taken out of context in the claims. Such positions fail to demonstrate that the invention claimed as a whole would have been routine or obvious.

The remainder of the official action relies in combination on Buhrman for an alleged double bend associated with the foot part 44 at which the lower end of Buhrman's rod rests against the wall. The foot part 44 has no structure that can be regarded as a double bend as taught in applicant's disclosure, where a double bend from parts 7 to 18 to 11 (see Fig. 3) provides a space (along one side of web 18) where the hose can hang directly behind the wall bar. Buhrman's structure obstructs such a space. Further, even if one accepts that Buhrman's tee and ell coupling are a double bend, the combination of Tse and Buhrman does not even resemble applicant's invention particularly claimed as a whole.

Warshawsky is cited as another element of the combination with Tse. Warshawsky has at least three pivoting or swiveling connections of parts of a table lamp. But the official action fails to articulate in any satisfactory way why a lamp with numerous swivel axes would be obviously and routinely combined with the Tse and Buhrman rods hung from shower pipes, to even remotely approach applicant's claimed invention.

This response corrects and clarifies matters to which the examiner has objected. No new matter is presented. Applicant infers from the nature of the

rejections that structural aspects that are stated in the claims and distinguish the invention from the art have been attacked or discounted on the erroneous belief that they are somehow unclear or are unclearly illustrated in the drawings, such as the unexplained official position that the slot in the mounting bracket is not disclosed and shown as opening toward the wall, or that there is some confusion about what is meant by the upward "lengthwise extension" of a wall bar. Applicant requests an opportunity for a telephone interview with the examiner to discuss any objections to clarity of language or illustration, prior to the first official action in this RCE.

The disclosure and claims are in condition for allowance.

Respectfully submitted,

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Docket No. D4700-00425  
P 43743 WO/US

Annotated Sheet

Added label that  
bracket 20 is "Open  
toward Wall."

